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NTSB Order No. EA-3629

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 10th day of July, 1992

_____	)	
BARRY LAMBERT HARRIS,	)	
Acting Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-9903
v.	)	
	)	
STACY ANNE RUNUNG,	)	
	)	
Respondent.	)	
_____	)	

**OPINION AND ORDER**

Respondent has appealed from the oral initial decision of Administrative Law Judge Patrick G. Geraghty, issued on September 27, 1989, following an evidentiary hearing.<sup>1</sup> We deny the appeal.

The Administrator's order of revocation (complaint) charged

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<sup>1</sup>The initial decision, an excerpt from the hearing transcript, is attached. Other portions of the transcript (see, e.g., discussion infra) also contain analysis and comment by the law judge. We have recently criticized this practice in Administrator v. Combs, NTSB Order EA-xxxx (1992).

respondent with violations of Federal Aviation Regulation § 61.59(a)(2) ("FAR," 14 C.F.R. Part 61).<sup>2</sup> The complaint arose in connection with various entries respondent made in her logbook. The Administrator proposed to revoke her commercial pilot and commercial flight instructor certificates.

Although initially denied, at the hearing respondent admitted that, in February-April 1988, she made 22 entries in her pilot logbook representing that she had acted as pilot-in-command ("PIC") of particular aircraft on particular dates. See Tr. at 4 and Order of Revocation, ¶ 2. Under the rule, the issue then became whether these entries were intentionally false or fraudulent.

At the hearing, the Administrator offered the testimony of the FAA's Acting Principal Operations Inspector for Durango Air Service (the company employing respondent). The matter of the improper log entries was brought to light when respondent applied for a flight check as a Part 135 pilot and her logbook was reviewed. Respondent testified that she flew only dead-head legs

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<sup>2</sup>§ 61.59(a)(2) reads:

§ 61.59 Falsification, reproduction, or alteration of applications, certificates, logbooks, reports, or records.

(a) No person may make or cause to be made:

(2) Any fraudulent or intentionally false entry in any logbook, record, or report that is required to be kept, made, or used, to show compliance with any requirement for the issuance, or exercise of the privileges, or any certificate or rating under this part[.]

of the logged flights, and she did so as instruction/training.<sup>3</sup> Allegedly, she was not aware that it was improper to log the entire flight (as opposed to the non-revenue portion) as PIC time as she did.

The law judge found the entries to be intentionally false<sup>4</sup> and, on appeal, respondent contends that the law judge's decision is not supported by a preponderance of the evidence. We disagree. Respondent's arguments regarding the manner in which certain flight time was to be recorded (i.e., whether certain time should or should not have been logged as dual instruction) and respondent's lack of training concerning proper logbook entries cannot overcome the fact that respondent knew and admitted that she was not operating the controls of the aircraft during the entirety of each flight (see, e.g., Tr. at 90-93, 98).

By crediting herself as PIC with the flight's total time, her records misrepresent her flight experience. This alone is sufficient evidence for the law judge to find intentionally false entries.

Even were this point not compelling, there is another basis

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<sup>3</sup>There is no dispute that the involved flights were, overall, Part 135 revenue flights for which particular qualifications to act as PIC were necessary -- qualifications respondent did not yet have. The unrebutted testimony also indicates, however, that she did not fly as PIC when there were revenue passengers or freight in the aircraft.

<sup>4</sup>The law judge, however, ordered revocation only of respondent's commercial pilot certificate. The Administrator has not appealed this aspect of the initial decision.

to affirm the law judge. Deciding whether an intentionally false statement has been made is often a matter of judging witness credibility, and we cannot find that the law judge's credibility assessment contrary to respondent was arbitrary or capricious. As the judge noted (Tr. at 70), the reasonable inference from her application for the flight check is that she knew she needed to be qualified to fly Part 135 operations as PIC. In other words, it can reasonably be inferred that she knew she could not log PIC time for revenue flights. Moreover, towards the end of the hearing, respondent had the following colloquy with the judge:

JUDGE GERAGHTY: So it is your position that at the time if you were sitting in the aircraft even if you were not touching the controls you could log it as pilot-in-command time?

THE WITNESS: If I were rated in the aircraft, yes that's what I thought I could do.

JUDGE GERAGHTY: So if I was rated in a 727 and I sat in the back of [the] airplane I could log it as pilot-in-command time, if I were a hundred seats away?

THE WITNESS: I was actually in the front seat --

On this record, it would not have been arbitrary or capricious for the law judge to have found respondent's explanation incredible, and then to have concluded that the record supported a finding that she knew her entries were false.

Respondent further argues that, to prevail, the Administrator must prove "each and every allegation" (Appeal at 8), and that he failed to do so because he did not introduce proof that respondent did not act as PIC on each and every

flight. This argument is frivolous and incorrect.<sup>5</sup> In any case, the Administrator cross-examined respondent on a number of flights, to the point where further evidence would have been cumulative. When combined with respondent's admission and the broad applicability of the testimony, the evidence was more than adequate to support the Administrator's order.<sup>6</sup>

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied; and
2. The Administrator's order of revocation of respondent's commercial pilot certificate is affirmed.

COUGHLIN, Acting Chairman, LAUBER, KOLSTAD, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

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<sup>5</sup>For example, the Administrator may seek revocation for false entries and identify 10 such entries in a complaint when proof of only one is necessary to justify the relief sought. Administrator v. McCarthney et al, NTSB Order EA-3245 (1990) (one false entry warrants revocation).

<sup>6</sup>Respondent also suggests that the law judge relied on a theory of constructive knowledge (respondent knew or should have known the entries were false), rather than finding the required actual knowledge. This statement by the law judge (Tr. at 110) must, however, be read in context. It is only a small part of the judge's summary of the facts. If the entire discussion is read (Tr. at 109-111), it is clear that the judge found sufficient facts to conclude respondent had actual knowledge of the falsity of the entries, and that his mention of "at least constructive knowledge" was simply one step in his analysis and toward his ultimate conclusion.